

No. 20-A-_____

IN THE
Supreme Court of the United States

HUNTER FUSSELL, an individual,

Applicant,

v.

STATE OF LOUISIANA,

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME TO
FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE LOUISIANA SUPREME COURT**

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February 28, 2020

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**OFFICE OF THE CLERK
SUPREME COURT, U.S.**

TO THE HONORABLE SAMUEL A. ALITO, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT:

Pursuant to Supreme Court Rules 13.5, 22, and 30, Applicant Hunter Fussell respectfully requests a 45-day extension of time, up to and including April 24, 2020, to file a petition for a writ of certiorari to the Louisiana Supreme Court to review that court's decision in *State v. Fussell*, 286 So.3d 1011 (La. 2019) (attached as Exhibit A). The Louisiana Supreme Court issued its judgment in the matter on December 11, 2019, and Mr. Fussell intends to file a petition seeking review of this judgment under Supreme Court Rule 10. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1257(a), and the time to file a petition for a writ of certiorari will expire without an extension on March 10, 2020. This application is timely because it has been filed more than ten days prior to the date on which the time for filing the petition is to expire. *See* Sup. Ct. R. 13.5.

PROCEDURAL HISTORY

This case presents a substantial question of the due process rights guaranteed to children: whether a court must conduct an individualized hearing for a child indicted of a criminal charge before trying that child as an adult.

Louisiana's Children's Code art. 305(A) mandates that a juvenile court automatically loses jurisdiction over a child that is aged 15 or older "at the time of the commission of first degree murder, second degree murder, aggravated or first degree rape, or aggravated kidnapping" if there is an indictment charging one of

these offenses or if the juvenile court holds a hearing and finds probable cause that the child committed one of these offenses.

Mr. Fussell was four days past his fifteenth birthday when he was arrested and charged with violating Louisiana Revised Statute 14:42(A)(4) for first-degree rape. Immediately after his arrest, Mr. Fussell was within the exclusive jurisdiction of Louisiana's juvenile courts under Article 305(A). But after a grand jury returned an indictment charging Mr. Fussell with one count of first-degree rape, Article 305(A)(2) mandated his automatic transfer from juvenile court to Louisiana's 22nd judicial district court for him to be tried as an adult.

On a motion to quash the transfer order, the Louisiana district court for the Parish of St. Tammany, held that Article 305(A) is unconstitutional and that a transfer hearing is constitutionally required before a child can be transferred to a district court and tried as an adult. The State of Louisiana appealed directly to the Louisiana Supreme Court, which vacated and remanded the trial court's ruling by order dated December 11, 2019. Three justices of the Louisiana Supreme Court dissented from the majority and would have upheld the trial court's ruling that Section 305(A) is unconstitutional. More specifically, those dissenting justices found that Louisiana's act of mandatory transfer for children under Article 305(A) "violates the Fourteenth Amendment Due Process Clause and violates the fundamental principles underlying United States Supreme Court jurisprudence[.]" Ex. A at 2 (Johnson, C.J., dissenting).

A grant of certiorari is appropriate to review the ruling of the Louisiana Supreme Court because that ruling deprives children of their right to due process and because it diverges from this Court's precedent, such as *Kent v. United States*, 383 U.S. 541 (1966), which establish the constitutional requirements of treating children differently than adults in matters of criminal justice. *See, e.g., Miller v. Alabama*, 567 U.S. 460 (2012); *Graham v. Florida*, 560 U.S. 48 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005).

GOOD CAUSE EXISTS FOR AN EXTENSION

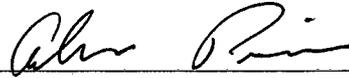
1. Good cause exists for the requested 45-day extension of time to file a petition for a writ of certiorari. Adam Pierson of DLA Piper LLP (US) serves as counsel of record for Applicant in this appeal, but Mr. Pierson and DLA Piper were only first retained by Mr. Fussell on February 14, 2020. Mr. Pierson was not involved in the proceedings below.

2. Mr. Fuessell's petition will involve a careful analysis of the substantive and procedural differences between Louisiana's juvenile courts and district courts, a comparison of Louisiana's Children's Code Art. 305(A) with similar transfer statutes of other jurisdictions, and the presentation of substantial research on the consequences of treating a child as an adult for criminal charges and sentencing. Mr. Fussell's counsel must familiarize themselves with these issues, including the record and arguments presented below.

3. The requested 45-day extension will allow Mr. Fussell's counsel sufficient time to prepare the petition and to present these important constitutional issues to the Court.

Accordingly, Applicant respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari for 45 days, up to and including April 24, 2020.

February 28, 2020



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